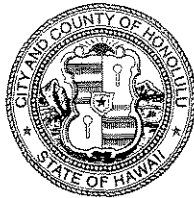


OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



April 28, 2008

The Honorable Barbara Marshall, Chair
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Marshall and Councilmembers:

I am returning to you Bill 4 (2008), CD1 without my signature.

I have no objections to establishing standards, procedures, and deadlines for the processing of Council-initiated Land Use Ordinance (LUO) amendments, so that these proposals are processed in the same manner and with sufficient documentation as if they were proposed by the Director of the Department of Planning and Permitting (DPP).

As adopted, however, Bill 4 raises several concerns:

1. We understand that the City Council is not satisfied with the current turnaround time on requests by City Council to change the LUO. However, we do not know why it was deemed appropriate to include general plan, development plan and subdivision changes to Bill 4. In recent years, there has only been one (1) request by the City Council to amend a development plan, and that was satisfactorily resolved through a special permit process.
2. Bill 4 could contravene current procedures for General Plan (GP) or Development Plan (DP) amendments. While the City Council can already initiate changes to the GP and DPs at any time, the formalized processes reflected in Bill 4 encourages ad hoc changes, rather than encouraging changes to take place under the 10-year and 5-year review processes, respectively. These processes allow for all requests to be evaluated together rather than a piece-meal fashion. Bill 4 would be a step backward from the current pro-active, broad community planning process, to a reactionary ad hoc project review process.

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3. Bill 4 gives no recognition to the department's general workload. It is expected that a significant amount of unanticipated research may be required by the Department of Planning and Permitting after a City Council request has been accepted, and the "clock" has already begun. Bill 4 makes no provisions for these follow-up needs. For private sector requests, the applicant is available for follow-up.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Mufi Hannemann', with a long horizontal flourish extending to the right.

Mufi Hannemann
Mayor

Attachment



A BILL FOR AN ORDINANCE

RELATING TO COUNCIL PROPOSALS TO AMEND THE GENERAL PLAN, THE DEVELOPMENT PLANS, THE ZONING ORDINANCES, AND THE SUBDIVISION ORDINANCE.

BE IT ORDAINED by the people of the City and County of Honolulu:

SECTION 1. Legislative findings and purpose.

The Revised Charter of the City and County of Honolulu (1973), as amended (the "Revised Charter"), vests the legislative power of the city in the city council. Thus, as it should be in a representative democracy, the council, an elected body, has the right and the responsibility to propose, deliberate, and enact the city's ordinances and any amendments thereto.

With respect to council proposals to revise or amend 1) the city's general plan, 2) the development plans, and 3) the zoning ordinances, including the Land Use Ordinance, the Revised Charter establishes procedures whereby the department of planning and permitting (the "department") and the planning commission have an opportunity to review and comment on the council proposals prior to action thereon by the council. Revised Charter Section 6-1511.2 provides that council proposals to revise or amend the general plan or any existing development plan may be proposed by the council and shall be processed in the same manner as if proposed by the director of planning and permitting. The proposal is referred to the director and the planning commission by resolution. Revised Charter Section 6-1513 establishes a similar procedure for council proposals to revise or amend the zoning ordinances.

In deference to this charter scheme, the council also has, by resolution, referred council proposals to revise or amend the subdivision ordinance to the department for review and processing.

However, the Revised Charter does not provide a deadline for the director of planning and permitting to transmit to the planning commission (or to the council, in the case of the subdivision ordinance) the foregoing types of revisions or amendments and the director's report and recommendation thereon. As result, some council proposals have been pending in the department for years. See, e.g., the proposals initiated by the council via resolutions: 02-141, CD1; 05-036; 05-209, CD1; 05-283, CD1; 06-033, CD1; 06-119; 06-141; 06-142; 07-007; and 07-008. Notably, Resolution 05-209, a council proposal to amend the Land Use Ordinance to establish a timeline for the director of planning and permitting to process zoning ordinance amendments, has been pending for more than two years.



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The council acknowledges the appropriateness of giving the department the opportunity to review its proposals, and further acknowledges that staffing problems in the department may contribute to delays. However, inordinately long delays hinder the legislative process and prevent the council from responding to the needs of the public by passing legislation within a reasonable period of time. In a worst-case scenario, the council could be stymied from ever acting on its proposals by the department's failure to process the proposals, either intentionally or by neglect. This gives an unelected administrative agency the power to block lawmaking action by the elected legislative body vested with that authority. This could not have been the intent of the drafters of the charter.

Accordingly, the purpose of this ordinance is to establish reasonable deadlines for the processing of council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and to clarify the responsibility of the director of planning and permitting to assist the council in adequately preparing its proposals for processing.

SECTION 2. Article 24 of Chapter 2, Revised Ordinances of Honolulu 1990, as amended ("Planning Department"), is repealed.

SECTION 3. Chapter 2, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Article 24 to read as follows:

"Article 24. Department of Planning and Permitting

Sec. 2-24.1 Applicability.

This article shall apply to council proposals to revise or amend:

- (1) The general plan;
- (2) A development plan;
- (3) The zoning ordinances; and
- (4) The subdivision ordinance.

Sec. 2-24.2 Definitions.

As used in this article:

"Council proposal" means any proposal set forth in Section 2-24.1.



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"Development plan" means a development plan for a particular area within the city, as described in Revised Charter Section 6-1509, and sometimes referred to as a sustainable communities plan, codified in Chapter 24.

"Director" means the director of planning and permitting.

"Director's alternative" means any ordinance or resolution proposed by the director as an alternative to a council proposal as provided in Section 2-24.4.

"General plan" means the general plan for the city, as described in Revised Charter Section 6-1508.

"Revised Charter" means the Revised Charter of the City and County of Honolulu 1973, as amended.

"Subdivision ordinance" means the city's ordinance governing the subdivision and consolidation of land, as described in Revised Charter Section 6-1515.1, codified as Chapter 22.

"Zoning ordinance" means:

- (1) The Land Use Ordinance, codified as Chapter 21; and
- (2) An ordinance designating and redesignating land to one or more of the zoning districts specified in the Land Use Ordinance.

Sec. 2-24.3 Initiation by the council.

- (a) A council proposal shall be initiated by adoption of a resolution by the council directing the director to process the proposal. The resolution shall state the reason for the proposal and shall attach a draft ordinance or resolution, as appropriate, setting forth the revision or amendment. Upon introduction of a resolution for a council proposal, the city clerk shall transmit a copy of the resolution to the director.
- (b) Prior to the adoption of the resolution pursuant to subsection (a), the director shall assist the council in the preparation of the council proposal by:
 - (1) Advising the council, within 30 days of the submission to the director of the introduced resolution, on the accompanying documentation, if any, needed to satisfy the director's usual requirements for the commencement



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of processing of the type of proposal being considered (general plan amendment, development plan amendment, Land Use Ordinance amendment, or rezoning of land) in the same manner as if proposed by the director. Any specification of required documentation shall be in sufficient detail to enable production of the documentation by third parties contracted by the council pursuant to subdivision (2);

- (2) Providing documents and information in the possession and control of the department of planning and permitting, as requested by any councilmember, including but not limited to maps; provided, however, that this subdivision shall not require the director to prepare arguments, justifications, or analyses in favor of the council proposal. Requested documents shall be submitted to the council within 30 days of the submission to the director of a written request from any councilmember. The council may contract with third parties for the preparation of any documentation, and shall submit copies of such documentation to the director for the director's review; and
- (3) Advising the council on the sufficiency of any documentation prepared by the council or its contractor to accompany the proposal within 30 days of submission of the documentation to the director.

The director's assistance in the preparation of the council proposal pursuant to this subsection shall not be construed as the director's support for or approval of the council proposal. The director's failure to advise the council on the necessary documentation or the sufficiency thereof within the deadlines specified above shall constitute a waiver by the director of any objection for insufficient accompanying documentation. Any supporting documentation shall be attached to and be deemed an integral part of the resolution adopted.

- (c) Upon adoption of a resolution initiating a council proposal, the city clerk shall transmit copies of the resolution to the director and, in the case of council proposals set forth in Sections 2-24.1(1), (2), and (3), the planning commission, along with a writing setting forth the date by which the director's report and accompanying proposed ordinance or resolution are required to be submitted to the planning commission or the council, as applicable, under the deadlines set forth in Sections 2-24.4(a) and (b).

Sec. 2-24.4 Processing by the department.

- (a) Council proposals to revise or amend the general plan, any development plan, or a zoning ordinance. Within 270 days of the adoption of the resolution initiating a



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council proposal to revise or amend the general plan, any development plan, or a zoning ordinance, the director shall submit a report, accompanied by the proposed ordinance or resolution, to the planning commission. If the director proposes an alternative ordinance or resolution for consideration by the planning commission, both versions shall be attached to the director's report in a form sufficient for introduction in the council.

- (b) Council proposal to revise or amend the subdivision ordinance. Within 270 days of the adoption of the resolution initiating a council proposal to revise or amend the subdivision ordinance, the director shall submit a report, accompanied by the proposed ordinance, to the council. If the director proposes an alternative ordinance, both versions shall be attached to the director's report in a form sufficient for introduction in the council.
- (c) Extension of deadline. Notwithstanding the foregoing, if the director finds that the council proposal involves complex issues that require additional time for review, the director may request a 60-day extension of the deadline as follows:
 - (1) Within the existing deadline, the director shall submit to the council a request for an extension of the deadline and an interim report describing the status of the director's processing of the council proposal and the reasons that additional time is need for processing.
 - (2) The council may approve or deny the proposed extension by adoption of a committee report or resolution. If the council fails to take final action on the proposed extension within 60 days after receipt of the director's request, the extension shall be deemed denied. The city clerk shall advise the director and, for council proposals set forth in Sections 2-24.1(1), (2), and (3), the planning commission, in writing of the council's action on the director's extension request. If the council approves the extension, the clerk shall also advise the director and, for council proposals set forth in Sections 2-24.1(1), (2), and (3), the planning commission, in writing of the new date by which the director's report and accompanying proposed ordinance or resolution are required to be submitted to the planning commission.
 - (3) If an extension of the deadline is approved by the council, the director may thereafter request subsequent extensions of the deadline in accordance with the procedures described above.



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Sec. 2-24.5 Processing by planning commission.

- (a) The planning commission shall commence processing of a council proposal to revise or amend the general plan, any development plan, or a zoning ordinance, upon the first to occur of:
 - (1) Submission of the director's report and proposed ordinance or resolution; or
 - (2) The director's failure to transmit the report and proposed ordinance or resolution by the deadline required by this article, including any extensions approved by the council pursuant to Section 2-24.4(c).
- (b) The planning commission shall hold a public hearing on the council proposal and any director's alternative within 45 days of the commencement of processing. Within 30 days of the close of the public hearing, the planning commission shall transmit through the mayor to the council the director's report, if any, council proposal, and any director's alternative, with its recommendations. If the director has proposed an alternative ordinance or resolution, the planning commission shall make recommendations on both the council proposal and the director's alternative. The mayor shall submit the director's report, if any, council proposal, any director's alternative, and planning commission recommendations to the council within 30 days of receipt of the same from the planning commission.

Sec. 2-24.6 Action by council.

- (a) If the planning commission disapproves a council proposal to revise or amend the general plan, any development plan, or a zoning ordinance, or recommends a modification thereof not accepted by the council, or fails to make its report within a period of either 30 days after the close of its public hearing or 90 days after the commencement of processing by the commission pursuant to Section 2-24.5(a), whichever occurs first, the council may nevertheless consider and adopt such council proposal, but only by the affirmative vote of at least two-thirds of its entire membership.
- (b) If the director disapproves a council proposal to revise or amend the subdivision ordinance, or recommends a modification thereof not accepted by the council, or fails to submit his or her report and proposed ordinance to the council within the required deadline specified in Section 2-24.4(b), including any extensions approved by the council pursuant to Section 2-24.4(c), the council may nevertheless consider and adopt such council proposal, but only by the affirmative vote of at least two-thirds of its entire membership.



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Sec. 2-24.7 Determination of submission date.

- (a) For the purposes of this article, a document shall be deemed submitted to the recipient when the document is received by the recipient.
- (b) The director shall cause the date and time of receipt by the department of planning and permitting of any of the following documents to be promptly stamped on the first page of the document, and notify the council in writing of the date of receipt:
 - (1) Any correspondence from the city clerk transmitting a copy of any introduced resolution for a council proposal pursuant to Section 2-24.3(a);
 - (2) Any correspondence from the council or any councilmember regarding the nature, preparation, or sufficiency of supporting documentation for the council proposal pursuant to Section 2-24.3(b); and
 - (3) Any correspondence from the city clerk transmitting a copy of any adopted resolution initiating a council proposal pursuant to Section 2-24.3(c).
- (c) The planning commission shall cause the date and time of receipt by the commission of any director's report on a council proposal, and accompanying proposed ordinance or resolution, to be promptly stamped on the first page of the report, and notify the council in writing of the date of receipt.
- (d) The city clerk shall promptly stamp the date and time of receipt by the council of any report or recommendation from the director or the planning commission, and accompanying proposed ordinance or resolution, on the first page of the report or recommendation.
- (e) If the date and time of receipt of a document is not stamped on a document, the document shall be deemed to be received by the recipient one day after the date set forth on the transmittal letter.

Sec. 2-24.8 Severability.

If any provision of this ordinance, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable."



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 4 (2008), CD1

A BILL FOR AN ORDINANCE

SECTION 4. This ordinance shall take effect upon its approval, and shall apply to council proposals, as defined in Section 3 of this ordinance, initiated prior to, on, or after the effective date of this ordinance; provided that for council proposals initiated prior to the effective date of this ordinance, the applicable deadlines established in Section 3 of this ordinance for the director, the planning commission, and mayor, shall begin to run from the effective date of this ordinance for proposals in the respective possession of the director, the planning commission, and the mayor.

INTRODUCED BY:

Barbara Marshall

Todd Apo

Romy M. Cachola

Nestor Garcia

Gary Okino

Ann Kobayashi

Rod Tam

DATE OF INTRODUCTION:

February 11, 2008
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 2008.

MUFI HANNEMANN, Mayor
City and County of Honolulu